

## **REMARKS**

The Notice of Incomplete Response dated October 15, 2009 has been received and carefully considered. Claims 1-33 are pending in the application. No claims have been amended in this Response. Applicants believe that the application is in condition for allowance and notice thereof is respectfully requested.

### ***1. Claims 12 and 28 Are Directed To Statutory Subject Matter***

Claims 12 and 28 (including their dependent claims) were rejected under 35 U.S.C. § 101 in the Office Action dated January 26, 2009 as allegedly directed to non-statutory subject matter. The Notice of Incomplete Response dated October 15, 2009 notes that “system claims 12 and 28 were rejected for lacking structure in the body of the claims, which recites a plurality of modules or software per se.” Notice, page 2. Applicants respectfully disagree for at least the following reasons.

The Court of Appeals for the Federal Circuit held in *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008), that the “definitive test” for whether a claimed process complies with 35 U.S.C. § 101 is the “machine-or-transformation” test where a “claimed process is surely patent-eligible under § 101 if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing.” *Id.* at 954.

Both claims 12 and 28 recite structure in the body of the claim. Applicants note that claim 12 recites, for example, “an RFID reading device operable to read the identification data from the RFID device. . . .” An RFID reading device is a “particular machine or apparatus” under the *Bilski* test, and the inclusion of an RFID reading device in claim 12 ties the “claimed process . . . to a particular machine or apparatus,” as required under *Bilski*. Applicants also respectfully submit that claim 28 recites, for example, “a financial card issuing module operable to provide a customer a financial card having a radio frequency identification (RFID) device coupled thereto, the financial card being affiliated with a particular merchant and having an associated financial account, the RFID device strong identification data identifying the financial account. . . .” Claim 28 also recites, for example, “a purchase history information storage module

operable to . . . store the receive purchase information in electronic storage associated with the financial card provider separate from the card as purchase history information associated with the financial account. . . .” Claim 28 includes, for example, both electronic storage and a module to provide a financial card. Applicants respectfully submit that claim 28 is also “tied to a particular machine or apparatus” under the *Bilski* test.

Applicants respectfully submit that claims 12 and 28 are clearly “tied to a particular machine or apparatus” under the *Bilski* test, and so are patentable subject matter under 35 U.S.C. § 101. All dependent claims associated with independent claims 12 and 28 are themselves allowable at least as being dependent upon an independent claim. Applicants respectfully request that the rejection of claims 12 and 28, and all associated dependent claims, under 35 U.S.C. § 101 be withdrawn.

## ***2. The Rejection Of Claims 12 and 28 and Dependent Claims Under 35 U.S.C. § 112 Should Be Withdrawn***

Claims 12 and 28 (including their dependent claims) are rejected under 35 U.S.C. § 112, second paragraph, as allegedly being confusing. Applicants respectfully disagree that the claims are “confusing.” However, as shown above, Applicants respectfully submit at least the amendments to claims 12 and 28 presented in the May 26, 2009 Response, and the arguments above with respect to the rejection under 35 U.S.C. § 101, clarify that the claims are “tied to a particular machine or apparatus.” Applicants respectfully submit that the claims do not change from a statutory class to a non-statutory class, as alleged in the Office Action dated January 26, 2009, as the claims include elements of a particular machine or apparatus, under the *Bilski* test. Applicants respectfully request that the rejection of claims 12 and 28 under 35 U.S.C. § 112, second paragraph be withdrawn.

All dependent claims associated with independent claims 12 and 28 are themselves allowable at least as being dependent upon an independent claim. Applicants respectfully request that the rejection of claims 12 and 28, as well as all

dependent claims depending therefrom, under 35 U.S.C. § 112, second paragraph, be withdrawn.

**CONCLUSION**

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action, and the present application is in condition for allowance. If the Examiner believes, for any reason, that a personal communication will expedite prosecution of this application, the Examiner is hereby invited to telephone the undersigned at the number provided below.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

It is believed that no fees are required for this response. If it is determined that additional fees are due, the Commissioner is hereby authorized to charge such fees to the undersigned's Deposit Account No. 50-0206 accordingly.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,

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